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RYAN KROMHOLZ & MANION, S.C.  
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MILWAUKEE, WI 53226

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APR 15 2005

In re Application of	:	OFFICE OF PETITIONS
Macoviak et al.	:	
Application No. 10/676,815	:	ON PETITION
Filed: October 1, 2003	:	
Attorney Docket No.	:	
9542.18429-FOR	:	

This is a decision on the Petition for an Unintentionally Delayed Benefit Claim Pursuant to 37 CFR 1.78(a)(3), filed November 12, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior filed nonprovisional application, number 10/237,261, filed September 5, 2002, which is properly treated as a petition under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6), for correction of the claim of priority in the above-identified application.

This Petition is hereby dismissed.

Applicable Law

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

The Commissioner may require additional information where there is a question whether the delay was unintentional.

The amendment filed with and included in the petition is unacceptable as drafted. In this regard, the amendment is physically part of the instant petition and, as such, does not comply with 37 CFR §§ 1.121; 1.52 or 1.4(c).

Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, requiring that amendments include "[a]n instruction, which unambiguously identifies the location," to be amended. Here, applicant simply "requests to amend the benefit claim", and has failed to provide instruction identifying the location to be amended.

The pertinent section of 37 CFR 1.52 states that the claim (in this instance, the claim for priority), must commence on a separate physical sheet.

37 CFR § 1.4(c) requires that "each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects."

In view of the above, the amendment to add a priority claim, which is physically embedded in the instant petition, is not acceptable.

Accordingly, before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) and a substitute amendment in compliance with the aforementioned rules; which amends the first line of the specification following the title, and which sets forth the relationship of the prior-filed application(s), is required.

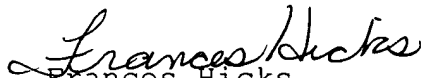
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                    Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to  
the Attorney Advisor Derek L. Woods at (272) 571-3232.

  
Frances Hicks  
Lead Paralegal  
Office of Petitions